

HON. RICHARD A. JONES

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

PHILIP SMITH,  
Plaintiff,

vs.

COUPANG, INC.,  
Defendant.

Case No. 2:23-cv-01887-RAJ

**DEFENDANT COUPANG, INC.'S  
RESPONSE TO PLAINTIFF'S MOTION  
TO SEAL PARAGRAPHS 29, 31, AND 40-  
43 OF THE CORRECTED AMENDED  
COMPLAINT**

NOTING DATE: April 19, 2024

Defendant Coupang, Inc. (“Defendant” or “Coupang”) hereby respectfully submits this Response to Plaintiff’s Motion to Seal Paragraphs 29, 31, and 40-43 of the Corrected Amended Complaint (Dkt. 36) (“Plaintiff’s Motion”).

### **ARGUMENT**

On December 8, 2023, Plaintiff filed a Complaint before this Court. Dkt. 1. Because that Complaint contained allegations referring to communications with, or advice provided by, Defendant’s counsel, which were therefore protected by attorney-client privilege, Plaintiff consulted with Defendant’s counsel before that filing to determine whether any portion of that Complaint should be filed under seal. As a result of that conference, Plaintiff submitted to this Court an Unopposed Motion to Seal certain paragraphs in that Complaint, which reflected attorney-client privileged information. Dkt. 2. This Court granted that Motion to Seal. Dkt. 11.

Defendant then filed a Motion to Dismiss the Complaint. In response, Plaintiff filed an Amended Complaint on February 26, 2024. Dkt. 28. Because that Amended Complaint again contained allegations referring to communications with, or advice provided by, Defendant’s counsel, which were therefore protected by attorney-client privilege, Plaintiff again consulted with Defendant’s counsel before that filing, to determine whether any portion of that Amended Complaint should be filed under seal. As a result of that conference, Plaintiff again submitted to this Court an Unopposed Motion to Seal Amended Complaint, seeking to seal certain paragraphs in that Amended Complaint, which reflected attorney-client privileged information. Dkt. 27. This Court likewise granted that Motion to Seal. Dkt. 29.

Defendant then filed a Motion to Dismiss the Amended Complaint. Dkt. 30. On April 5, 2024, Plaintiff filed a Motion for Leave to File Corrected Amended Complaint, attaching as Exhibit A the proposed Corrected Amended Complaint, and as Exhibit C a redline of that proposed Corrected Amended Complaint. Dkts. 37, 37-1, 37-3. Recognizing that Exhibits A and B (Dkts. 37-1 and 37-3) contained the same attorney-client privileged information that had been contained in the prior Amended Complaint, which had been filed under seal, Plaintiff contemporaneously filed a Motion to Seal those two exhibits. Dkt. 36.

1 Plaintiff did not consult with Defendant prior to filing the Motion to Seal on April 5 (Dkt.  
2 36), and therefore did not caption or docket that Motion as “unopposed.” However, Defendant has  
3 since conferred with Plaintiff’s counsel, and confirmed that Plaintiff’s Motion to Seal is indeed  
4 unopposed.

5 Further, paragraphs 29, 31, and 40-43 of Plaintiff’s proposed Corrected Amended Complaint  
6 (Exhibit A), and the redline of that document (Exhibit B), reflect alleged communications with  
7 Defendant’s counsel, and/or alleged advice received by that counsel. Accordingly, those allegations  
8 are protected by attorney-client privilege, and should remain under seal. *See Hason v. Wells Fargo*  
9 *Home Tg., Inc.*, 2013 WL 5674997, at \*3-4 (W.D. Wash. Oct. 17, 2013) (sealing as attorney-client  
10 privilege doctrine communications referenced in declaration “between counsel for the corporation  
11 and the corporation’s employees”); *Ashby v. United States*, 2019 WL 1354157, at \*1 (W.D. Wash.  
12 Mar. 26, 2019) (sealing declaration providing “detailed account of attorney-client  
13 communications”); *Creative Tent Int’l Inc. v. Kramer*, 2015 WL 4638320, at \*3 (D. Ariz. Aug. 4,  
14 2015) (sealing answer and counterclaim containing “privileged attorney-client communications”).

### 15 CONCLUSION

16 For the reasons set forth herein, Plaintiff’s proposed Corrected Amended Complaint, and the  
17 redline of that document, filed at Dkts. 37-1 and 37-3, should be kept under seal.

1 DATED: April 15, 2024

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22 *Attorneys for Defendant Coupang, Inc.*

**LCR 7 WORD COUNT CERTIFICATION**

I certify that, in compliance with the 4,200 word limit set forth in Local Civil Rule 7(e)(4), this memorandum contains 539 words.

DATED: April 15, 2024

/s/ Alicia Cobb

Alicia Cobb, WSBA #48685

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

DATED: April 15, 2024

/s/ Alicia Cobb

Alicia Cobb, WSBA #48685